

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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JAMES G. ABOUREZK; JANE FONDA;	)	
ROXANNE DUNBAR-ORTIZ,	)	
	)	
Plaintiffs,	)	
vs.	)	
	)	
PROBUSH.COM, INC., a Pennsylvania	)	<b>DEFENDANTS' RESPONSE TO PLAINTIFFS'</b>
Corporation; MICHAEL MARINO; and	)	<b>STATEMENT OF UNDISPUTED FACTS</b>
BEN MARINO,	)	
	)	
Defendants.	)	
	)	

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Plaintiffs have filed a motion for partial summary judgment. Defendants' Probush.com, Inc., Michael Marino, and Ben Marino respectfully submit this response to Plaintiffs' Statement of Undisputed Material Facts pursuant to D.S.D. Local Rule 56.1(C). This response is supported by previously filed affidavits with attached documentary evidence.

**RESPONSE TO PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS**

1. Not disputed.
2. Not disputed.
3. Not disputed.
4. Not disputed.
5. Not disputed.
6. Not disputed.
7. Not disputed.
8. Disputed in part. The Defendants' website had a "Traitor List" that listed a number of prominent Americans including the Plaintiffs, but the list did not state that the

celebrities listed were “traitors to the United States,” but in fact stated that the list was a parody and expressly stated that these people were *not* real traitors or legal traitors to the United States. Deposition of Benjamin Marino, page 49, lines 15-20; Deposition of Michael Marino, pages 60, lines 7-9.

9. Not disputed.

10. Not disputed.

11. Disputed. The ProBush.com website placed Plaintiffs, James Abourezk, Roxanne Dunbar-Ortiz, and Jane Fonda on its “Traitor List,” but the list did not state that the celebrities listed were “traitors to the United States,” but in fact stated that the list was a parody and that these people were *not* real traitors or legal traitors to the United States. Deposition of Benjamin Marino, page 49, lines 15-20; Deposition of Michael Marino, page 60, lines 7-9.

12. Not disputed.

13. Not disputed.

14. Not disputed.

15. Not disputed.

16. Not disputed.

17. Not disputed.

18. Not disputed.

19. Not disputed.

20. Not disputed.

21. Not disputed.

22. Not disputed.

23. Not disputed.

24. Not disputed.

25. Not disputed.

26. Not disputed.

27. Not disputed. However, the Plaintiffs' have provided an incorrect citation. The correct citation to this statement is Deposition of Michael Marino, page 29, lines 4-7.

28. Not disputed.

29. Not disputed.

30. Not disputed.

31. Not disputed.

32. Disputed in part. Defendant Benjamin Marino stated in his deposition that he published the website because there was a niche for support for President Bush and was looking at it more from the business angle. Dep. of B. Marino, p. 44, lines 8-14.

33. Not disputed.

34. Not disputed.

35. Not disputed.

36. Not disputed.

37. Not disputed.

38. Not disputed.

39. Not disputed.

40. Not disputed.

41. Not disputed.

42. Not disputed.

43. Not disputed.

44. Not disputed.

45. Not disputed.

46. Not disputed.

47. Not disputed.

48. Not disputed.

49. Disputed. The disclaimer was first added to the “Traitor List” as soon as it went up on the website and the “Traitor List” was never without a disclaimer. The Plaintiff clearly saw the disclaimer on the website due to the fact the initial correspondences from the Plaintiffs’ attorney to the Defendants addressed the “legal disclaimer” and the fact that the Plaintiff “realized the Defendants attempted to place a disclaimer on the site.” Deposition of Michael Marino, page 58, lines 6-21; *See also* Deposition of Senator James Abourezk, *Exhibit 13* and *Exhibit 14*.

50. Not disputed.

51. Not disputed.

52. Not disputed.

Dated this 5th day of August, 2005.

**JOHNSON, HEIDPRIEM, MINER,  
MARLOW & JANKLOW, L.L.P.**

**BY RONALD A. PARSONS, JR.**

Ronald A. Parsons, Jr.  
Kimberly J. Lanham  
P.O. Box 1107  
Sioux Falls, SD 57101-1107  
(605) 338-4304

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of **Defendants' Response to Plaintiffs' Undisputed Material Facts** was served by first class U.S. mail, postage prepaid, upon on:

Charles Abourezk  
ABOUREZK & ZEPHIER, PC  
PO Box 9460  
2020 W. Omaha St.  
Rapid City, SD 57701

*Attorneys for the Plaintiffs*

on this 5th day of August, 2005.

RONALD A. PARSONS, JR.  
Ronald A. Parsons, Jr.